

### REMARKS/ARGUMENTS

This amendment is responsive to the outstanding Office Action, and is accompanied by a Petition to revive an abandoned application and petition fee, under 37 CFR 1.137(b). Entry of the foregoing amendment and consideration of the amendment is therefore respectfully requested.

Claims 1-12, 14-27, 34-39, 48-50 and 53-60 are now pending. Claims 23 and 34 has been amended to further clarify the present invention. No new matter has been added. Applicant respectfully requests reconsideration of the patentability of the pending claims of the present application in view of the amendments and following remarks.

#### Oath/Declaration

The Office Action alleges that the reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. Claims 1-12, 14-27, 34-39, 48-50 and 53-60 have been rejected as being based upon the defective reissue oath/declaration under 35 U.S.C. § 251.

A new oath/declaration is being submitted herewith that identifies at least one error which is relied upon to support the reissue application. As such, the rejection of claims 1-12, 14-27, 34-39, 48-50 and 53-60 based upon a defective oath/declaration is now moot.

#### Consent of Assignee

The application has been objected to under 37 CFR 1.172(a) as lacking the written consent of all assignees owning an undivided interest in the patent. Submitted herewith is the consent of the assignee. As such, the objection to the application for lack of written consent of all assignees is now moot.

#### Listing of Claims

The amendments filed on January 17, 2002; June 17, 2003 and December 15, 2003 proposed amendments to claims 23-27, 34-39, 48-50 and 53-60 that do not comply with 37 CFR

1.173(b). Submitted herewith is a complete listing of the claims in the application that complies with 37 CFR 1.173(b). A supplemental oath/declaration is also submitted herewith.

Rejections under 35 U.S.C. §251

5            Claims 23-27 and 34-39 are rejected under 35 U.S.C. §251 as being based upon new matter added to the patent for which reissue is sought. The added material which allegedly is not supported by the prior patent is "Claims 23 and 34 contain subject matter not disclosed in the original disclosure such as "by a single hand of an operator" and means "responsive . . . for twisting" respectively."

10           Applicant respectively traverses this rejection.

Claim 23

15           Claim 23 has been amended to further clarify the invention in that the "extensible frame being manually actuatable by a single finger of an operator". No new matter has been added. Support for this amendment is shown in Figure 8 and described at Col. 2, lines 1-10 as follows:

20           "The latch arm and slot, in addition to providing the user with tactile feedback, insure that once deployment of the needle shield has been initiated, *sufficient momentum is present in the finger of the user to complete deployment*. To overcome the resistance of the lever arm as it is pulled through the slot, the user must provide enough force against the extensible frame that, once the lever arm clears the slot, deployment is completed in a single motion, without any additional attention by the user."

25           Claim 34

            Claim 34 has been amended to further clarify the invention. The claim now reads "means responsive to the extension of the frame for rotating the needle tip cover into a position . . ." No new matter has been added Support for this amendment is described at Col. 2, lines 5-12 as follows:

30           "To install the presently preferred embodiment of the needle point guard safety cap assembly, the syringe attachment member and the needle point cover

must be rotated into position to receive the needle. The syringe attachment member and frame are flexibly coupled. The syringe attachment member or base cup 150 is therefore rotated approximately 90 degrees with respect to the frame 130 so that the needle can extend through the syringe attachment member 150 approximately parallel to the extended frame 130.”

In view of the above, the rejection of claims 23-27 and 34-39 under 35 U.S.C. §251 is now moot.

### Rejections under 35 U.S.C. §112

Claims 23-27 and 34-39 are rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement. The claims allegedly contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, has possession of the claimed invention. Specifically, the Office Action alleges that claims 23 and 34 contain subject matter not disclosed in the original disclosure such as “by a single hand of an operator” and “means responsive . . . for twisting” respectively.

As discussed above, claim 23 has been amended to further clarify the invention in that “extensible frame being manually actuatable by a single finger of an operator”. Support for this amendment is found at least at Col. 2, lines 5-12 and Figure 8.

Also as discussed above, claim 34 has been amended to further clarify the invention. The claim now reads “means responsive to the extension of the frame for rotating the needle tip cover into a position . . .” Support for this amendment is found at least at Col. 4, lines 5-12

In view of the above, the rejection of claims 23-27 and 34-39 under 35 U.S.C. §112, first paragraph, is now moot.

Conclusion

For the foregoing reasons, Applicant believes Claims 1-12, 14-27, 34-39, 48-50 and 53-60 are allowable, and a notice of allowance is respectfully requested. If the Examiner believes that a telephone conference with Applicant's representative might expedite prosecution of the application, he is cordially invited to call at the undersigned agent.

Respectfully submitted,

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